SUPREME COURT, U. S.

APR 11 1968

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1311

THEODORE McGANN, ADMINISTRATOR
c.t.a. of the
ESTATE OF JOSEPH H. McGANN, SR., DECEASED,
Petitioner

v.

DISTRICT OF COLUMBIA, a municipal corporation,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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v.

DISTRICT OF COLUMBIA, a municipal corporation,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, Theodore McGann, Administrator c.t.a. of the Estate of Joseph H. McGann, Sr., deceased prays that a Writ of Certiorari issue to review the proceedings in the United States Court of Appeals for the District of Columbia, wherein said court entered a judgment, on the 12th day of January, 1968, which judgment is appended hereto at page 1a, which affirmed the judgment of the United States District Court for

the District of Columbia, entered the 30th day of June, 1967, which judgment is appended hereto at page 1b.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1254 (1).

QUESTIONS PRESENTED

1. Whether the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit failed to follow applicable decisions of this Court governing the interpretation of a statute.

2. Whether the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit deprived the father of his basic constitutional right to notice and a hearing as expressly provided in the statute and the Fourteenth Amendment to the United States Constitution.

3. Whether the case of *Harris* v. *District of Columbia,* 123 App. D.C., 133, 357 Fed. 2d, 593, (1965), cited in the Judgment of the Court of Appeals, provided the legal basis for such judgment.

STATUTES INVOLVED

1) Title 21, Section 586, of the District of Columbia Code, 1967 Edition

2) The following portion of the Fourteenth Amendment to the United States Constitution:

> " ; or shall any state deprive any person of life, liberty or property, without due process of law, * * * "

STATEMENT OF THE CASE

On the 18th day of October, 1940, Robert R. McGann was committed to Saint Elizabeth's Hospital, Washington, D.C., Mental Health No. 21,816, in the United States District Court for the District of Columbia.

This Order of Commitment provided: "That the expense of the maintenance and treatment of Robert R. McGann shall be borne and paid by the District of Columbia until further order of this Court.

Said Order of Commitment further provided "that Joseph McGann, father of respondent, being able and having agreed to pay and contribute to the expense of the maintenance and treatment of Robert R. McGann in Saint Elizabeth's Hospital, be and hereby is authorized and directed to pay the sum of Thirty Dollars ($30.00) per month to the District of Columbia until further order of this Court."

Joseph H. McGann, Sr., paid $30.00 a month to the District of Columbia from the date of the order of commitment to the date of his death.

Demand for the payment of any amount in excess of the $30.00 a month was never made upon the father, Joseph H. McGann, Sr., during his lifetime.

The District of Columbia, on August 5, 1966, docketed a claim against the Estate of Joseph H. McGann, Sr., deceased, for the sum of $37,615.14, representing board and care of Robert R. McGann at Saint Elizabeth's Hospital in the Office of the Register of Wills, D.C. This claim was rejected by the defendant on the 23rd day of August, 1966, and thereafter the plaintiff, on the 9th day of September, 1966, filed a Complaint (for money due) in the Civil Division of

the United States District Court for the District of Columbia against Theodore McGann, as administrator c.t.a. of the Estate of Joseph H. McGann, Sr., deceased.

The cause went to a hearing before Judge Alexander Holtzoff, on the 15th day of June, 1967, and Judgment was entered against the defendant for $37,615.14.

Petitioner (defendant) on the 21st day of July, 1967, filed a Notice of Appeal to the United States Court of Appeals for the District of Columbia Circuit and thereafter perfected said appeal. The case was argued on the 10th day of January, 1968, before Wright, Tamm and Robinson, Circuit Judges, and on the 12th day of January, 1968, judgment was entered affirming the judgment of the District Court.

REASONS FOR ALLOWANCE OF WRIT

1. The District Court and the District Court of Appeals Failed to Follow Applicable Decisions of This Court Governing the Interpretation of a Statute

The statute involved in this case is known as Title 21, Section 586, of the District of Columbia Code, 1967 Edition, and the pertinent provisions of the same are as follows:

> (a) "The father, mother, husband, wife, and adult children of a mentally ill person, if of sufficient ability, and the estate of the mentally ill person, if the estate is sufficient for the purpose, shall pay the cost to the District of Columbia of the mentally ill person's maintenance, including treatment, in a hospital in which the person is hospitalized under this chapter * * * "
>
> (b) "If a person made liable by subsection (a) of this section for the maintenance of a mentally ill person fails so to provide or pay for the maintenance, the court shall issue to him a citation to

show cause why he should not be adjudged to pay a portion or all of the expenses of maintenance of the patient. The citation shall be served at least ten days before the hearing thereon. * * * "

The aforementioned statute creates a new liability unknown to the common law and is subject to a strict interpretation in conformity with the rule laid down by this Court in the case of the *Northern Pacific Railroad* v. *Whelan,* 149 U.S. 157, decided on April 24, 1893, wherein the Northern Pacific sought an injunction against the defendant, Whelan, to prevent him from selling liquor to the employees of said railroad. The Court denied the injunction and in so doing said:

> "But this section, creating a new liability unknown to the common law, is to be strictly construed, and is not to be extended beyond the clear import of its terms; and, as the only remedy which it gives is an action against the seller of the liquor, or against the owner, of the place where it is sold, to recover damages suffered by reason of sales to particular persons, it cannot be construed as authorizing an injunction to prevent the use of the building for future sales."

The case of *Hamilton* v. *Rathbone,* 175 U.S. 414, decided December 18, 1899, had to do with the interpretation of Section 728 of the "Revised Statutes of the District of Columbia" and was by a Writ of Error issued by the Supreme Court of the United States to the then Supreme Court of the District of Columbia and had to do with the right of a married woman to dispose of all of her property, and Mr. Justice Brown in the opinion of the Court said,

> "But where the act is clear upon its face, and when standing alone it is fairly susceptible of but

one construction that construction must be given to it."

Mr. Justice Brown in this case cited the case of *United States.* v. *Goldenberg,* 168 U.S. 95 (decided October 25, 1897) in which Mr. Justice Brewer said:

> "The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar. The Courts have no function of legislation and simply seek to ascertain the will of the legislator."

2. The District Court and the District Court of Appeals Deprived the Party in Interest (Father) of His Basic Constitutional Right to Notice and a Hearing, as Expressly Provided in the Statute and the Fourteenth Amendment to the United States Constitution

In many instances it is the terms of a statute which is found lacking in due process, but in the instant case the legislature with unmistakable clarity expressly provided that the party (father) be given notice and a hearing, as evidenced by the following passage from said statute:

> " * * * THE COURT SHALL ISSUE TO HIM A CITATION TO SHOW CAUSE WHY HE SHOULD NOT BE ADJUDGED TO PAY A PORTION OR ALL OF THE EXPENSES OF MAINTENANCE OF THE PATIENT. THE CITATION SHALL BE SERVED AT LEAST TEN DAYS BEFORE THE HEARING THEREON. * * * "

The pertinent part of the Fourteenth Amendment to the United States Constitution is as follows:

> " ; OR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY OF PROPERTY, WITHOUT DUE PROCESS OF LAW, * * * "

This court has rigidly adhered to the principles enunciated in the Fourteenth Amendment. A case often quoted as authority on this subject is *Pennoyer* v. *Neff*, 95 U.S. 714, decided in 1878, wherein the plaintiff sought to collect an attorney fee from a non-resident thru service by publication and upon the entry of judgment for the plaintiff and an appeal to this Court resulted in a reversal of said judgment, and this Court in its opinion said:

> "Since the adoption of the Fourteenth Amendment to the Federal Constitution, the validity of such judgments may be directly questioned, and their enforcement in the state resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom the court has no jurisdiction do not constitute due process of law * * *. They then mean a course of legal proceedings according to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity there must be a tribunal competent by its constitution—that is by the law of its creation—to pass upon the subject-matter of the suit; and if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance".

In 1915 this Court in the case of *Simon* v. *Southern Railway*, 236 U.S. 115, in reversing a judgment obtained against the defendant by service upon the Secretary of State of Louisiana, said:

> "The defendant should have been served personally * * * When a petition cannot legally be served on a defendant, the Court can exercise no jurisdic-

tion over him. The service defines the court's jurisdiction."

The case of *Coe* v. *Armour Fertilizer Works,* 237 U.S. 413, also decided in 1915, had to do with a judgment against the Parrish Vegetable and Fruit Company by Armour Fertilizer Works. Coe, as a shareholder of the Parrish Co. was made liable for the amount of the judgment by statute and the property of Coe was levied upon, and the Court, in holding this proceeding invalid, said:

> "It may be conceded that a judgment recovered against a corporation, without fraud or collusion, in a court having jurisdiction over the subject-matter and the party, may consistently with the Fourteenth Amendment be treated as concluding the stockholder respecting the existence and amount of the indebtedness so adjudged, Sanger vs. Upton Assignee, 91 U.S. 56, 59; Hawkins vs. Glenn, 131 U.S. 319, 329; Glenn vs. Liggett, 135 U.S. 533, 544; Great Western Telegraph Co. vs. Purdy, 162 U.S. 329, 337.
>
> "But before a third party's property may be taken to pay that indebtedness upon the ground that he is a stockholder, and indebted to the corporation for an unpaid subscription, he is entitled, upon the most fundamental principles, to a day in court and a hearing upon such questions as whether the judgment is void or voidable for want of jurisdiction or fraud, whether he is a stockholder and indebted, and other defenses personal to himself. See Great Western Telegraph Company vs. Purdy, ubi supra; Bernheimer vs. Converse, 206 U.S. 516, 528, 532; Converse vs. Hamilton, 224 U.S. 243, 256; Selig vs. Hamilton, 234 U.S. 652, 660."

Your petitioner, at this point, respectfully calls to the attention of the Court the similarity of the facts in the aforementioned *Coe* v. *Armour* case and the instant case in that in both cases the party sought to be held was a third party and not primarily responsible for the payment of the indebtedness.

A Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit was granted in the case of *Griffin* v. *Griffin,* 327 U.S. 220, decided in 1946. The facts in that case had to do with an action brought by the wife in the District Court for the District of Columbia against the husband to recover on a New York judgment obtained against said husband for arrears of alimony payments. The husband was served in the original suit for alimony and an order entered in 1926 in the New York court requiring him to pay $3,000.00 annually as alimony. In 1938 the New York court entered an ex parte money judgment without notice to the husband. The District Court entered judgment for the wife based on the New York judgment and upon appeal to the District Court of Appeals said judgment was affirmed and thereafter the husband petitioned this court for a Writ of Certiorari.

This Court in reversing the judgment said:

> "Concededly the 1938 judgment was entered without actual notice to or appearance by petitioner, and without any form of service of process calculated to give him notice of the proceedings. Compare International Shoe Co. vs. Washington, 326 U.S. 310, 320-321. Because of the omission and to the extent that petitioner was thus deprived of an opportunity to raise defenses otherwise open to him under the law of New York against the docketing of judgment for accrued alimony there was a want of that jurisdiction over the person of

the petitioner prerequisite to the rendition of a judgment *in personnam* against him, McDonald vs. Mabee, 243 U.S. 90 cf; Webster vs. Reid, 11 How 437, 459.

"Since by virtue of the due process clause the judgment is ineffective in New York to adjudicate petitioner's rights for enforcement purposes, it cannot be made the instrument for enforcing elsewhere—the obligation purportedly adjudicated by it."

3. The Case of Harris vs. District of Columbia, 123 App. D.C., 133, 357 Fed. 2d 593, (1965), Did Not Provide a Legal Basis for the Judgment Entered by the United States Court of Appeals for the District of Columbia Circuit.

A study of the Harris case will show that the party to be charged in that case was (1) cited by the Court; (2) granted a hearing by the Court and (3) an Order of Court was entered establishing a sum certain to be paid by the parent. In the instant case, none of these elements was present.

Prior to the Harris case, the Court of Appeals in several decisions held that the liability of the parent attached at the time notice was given to such parent. The Harris case relaxed this rule and applied equity to the determination as to when the liability attached, and if the circumstances would warrant, the parent could be held liable for the past maintenance of the patient, which was allowed in that case. The argument was advanced by the District of Columbia that the Harris case held that the recovery was based on equitable principles.

Your petitioner believes this premise to be false. To subscribe to the validity of this contention, one would

have to ignore the express terms of the statute. This statute is a masterpiece in brevity and clarity and acts as a safeguard against the violation of the Due Process Clause of the United States Constitution.

Your petitioner contends that the liability of the party to be charged is inchoate in nature and does not become absolute until the occurrence of three things, namely: (1) Citing the parent during life; (2) Granting the parent a Court hearing and (3) The entry of an Order of Court against the parent for the payment of a sum certain.

CONCLUSION

It is respectfully submitted, in the light of the foregoing, that the above petition for the issuance of a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit should be granted.

Respectfully submitted,

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Washington, D. C. 20005
Attorney for Petitioner

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2335-'66

DISTRICT OF COLUMBIA, a municipal corporation, Room 211, 451 Indiana Ave., N. W., Washington, D. C. 20001
Plaintiff

v.

THEODORE MCGANN, ADMINISTRATOR, C.T.A., OF THE ESTATE OF JOSEPH H. MCGANN, SR., DECEASED

Judgment

The above-entitled cause having come on for trial by the Court, and it having been stipulated by the parties that the unreimbursed cost to the District of Columbia of the care and treatment of Robert R. McGann, son of the above-named decedent, in Saint Elizabeths Hospital from said patient's commitment on October 18, 1940, until March 11, 1965, the date of death of the aforesaid deceased Joseph H. McGann, Sr., is $37,615.14, and it appearing to the Court on the basis of admitted facts as set forth in the record of Administration No. 114,623, and Civil Action No. 1800-66, that the deceased, Joseph H. McGann, Sr., was and his estate is able to pay the full amount due, since even after payment there will be a considerable surplus in the net estate, and it further appearing that the said Joseph H. McGann and his estate are liable to reimburse plaintiff for the aforesaid hospitalization costs as a matter of law, it is by the Court this 30 day of June, 1967,

ORDERED, That a judgment in favor of the District of Columbia in the amount of $37,615.14 be, and the same hereby is entered against Theodore McGann, Administrator C.T.A. of the estate of Josph H. McGann, Sr., deceased.

ALEXANDER HOLTZOFF
Judge

JAMES PATRICK BURNS
James Patrick Burns
Attorney for Defendant

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1967

No. 21,322

THEODORE McGANN, Administrator, C.T.A., of the Estate of Joseph H. McGann, Sr., Deceased, *Appellant*

v.

DISTRICT OF COLUMBIA, a municipal corporation, *Appellee*

Filed January 12, 1968

Appeal from the United States District Court for the District of Columbia.

Before: WRIGHT, TAMM and ROBINSON, Circuit Judges.

Judgment

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, and it appearing that this case is controlled by the decision of this court in *Harris* v. *District of Columbia,* 123 U.S. App. D.C. 133, 357 F.2d 593 (1966),

It is ORDERED and ADJUDGED by this court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed.

Per Curiam

Dated: January 12, 1968

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BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1311

THEODORE McGANN, ADMINISTRATOR, C.T.A.,
OF THE
ESTATE OF JOSEPH H. McGANN, SR., DECEASED,
Petitioner,

v.

DISTRICT OF COLUMBIA,
A MUNICIPAL CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to The United States Court of Appeals for the District of Columbia Circuit

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IN THE

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OCTOBER TERM, 1967

No. 1311

THEODORE McGANN, ADMINISTRATOR, C.T.A.,
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v.

DISTRICT OF COLUMBIA,
A MUNICIPAL CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to The United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR RESPONDENT IN OPPOSITION

QUESTION PRESENTED

Should this Court exercise its jurisdiction to review by a writ of certiorari the construction of a statute of purely local application whereby the estate of a deceased parent is required to pay expenses incurred by a municipal cor-

poration during the decedent's lifetime in connection with the maintenance and care of decedent's mentally incompetent son?

COUNTER-STATEMENT OF THE CASE

Upon recommendation of the District of Columbia Mental Health Commission, decedent's mentally incompetent son was, in 1940, committed by order of the United States District Court for the District of Columbia to Saint Elizabeths Hospital. Having first held a hearing concerned, *inter alia*, with the decedent's ability to pay for his son's support, the Commission recommended and the court ordered that decedent pay $30 a month until further order of the court (J. A. 25, 26). However, maintenance expenses in excess of decedent's monthly payments were admittedly incurred by respondent in connection with decedent's son's care (J. A. 21). When, upon decedent's death, it was discovered that he left an estate valued at more than $90,000, respondent brought, pursuant to § 21-586, D. C. Code, 1967,[1] an action for recovery of these additional expenses (J. A. 18, 19). The United States District Court for the District of Columbia subsequently entered judgment in respondent's behalf, and the United States Court of Appeals for the District of Columbia Circuit affirmed (J. A. 22-24, petitioner's appendix, 1a, 2a). Thereafter, petitioner filed in this Court a petition for a writ of certiorari.

ARGUMENT

Petitioner has failed to present any question of substance warranting the exercise of this Court's jurisdiction to review on writ of certiorari.

The record does not disclose any ground for review conceivably falling within the standards and considerations

[1] This statute is set forth in Appendix, *infra*, p. 1a.

governing review on writ of certiorari prescribed by Rule 19 of the Rules of this Court. The case involves nothing more than the construction of a District of Columbia statute of purely local application which creates support obligations among blood relatives. In ruling in respondent's behalf, the United States Court of Appeals for the District of Columbia Circuit construed § 21-586, D. C. Code, 1967, *supra*, so as to permit recovery from the estate of the parent of the mentally incompetent child of the reasonable hospital expenses incurred on behalf of such child during the parent's lifetime. This ruling not only accords with the court's previous pronouncements, but is consistent with the law elsewhere as well. *Harris* v. *District of Columbia*, 123 U. S. App. D. C. 133, 357 F. 2d 593 (1965); cf. *Beach* v. *Government of District of Columbia*, 116 U. S. App. D. C. 68, 320 F. 2d 790 (1963); *In re Harnish's Estate*, 268 Pa. 128, 110 Atl. 761 (1920); *In re Glass' Estate*, 175 Kan. 246, 262 P. 2d 934 (1953); *State* v. *Stone*, 271 S. W. 2d 741 (Tex. Civ. App., 1954); cf. *Pennhurst State School* v. *Estate of Goodhartz*, 42 N. J. 266, 200 A. 2d 112 (1964).

This Court has made it clear on more than one occasion that where, as here, it is confronted with a petition for a writ of certiorari involving nothing more than a matter of purely local significance, it will not, absent a clear showing of egregious error, exercise its jurisdiction. See *American Security and Trust Co.* v. *District of Columbia*, 224 U. S. 491 (1912); *Del Vecchio* v. *Bowers*, 296 U. S. 280 (1935); *District of Columbia* v. *Pace*, 320 U. S. 698 (1944); *United Surety Co.* v. *American Fruit Product Co.*, 238 U. S. 140 (1915); *Griffith* v. *United States*, 336 U. S. 704 (1949), rehearing denied, 337 U. S. 921 (1949); *Fisher* v. *United States*, 328 U. S. 463 (1946).

There has been no showing of egregious error here. Petitioner obviously cannot convert a simple matter involving the construction of a local statute delineating the

support obligations of blood relatives into a constitutional question involving due process considerations. Here, as in *United Surety Co.* v. *American Fruit Product Co., supra* "* * * The constitutional point is a mere pretext put forward in order to open other questions that otherwise could not come here. * * *" (238 U. S. at 142.)

CONCLUSION

Upon the foregoing, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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§ 21-586. *Financial responsibility for care of hospitalized persons; judicial enforcement*

(a) The father, mother, husband, wife, and adult children of a mentally ill person, if of sufficient ability, and the estate of the mentally ill person, if the estate is sufficient for the purpose, shall pay the cost to the District of Columbia of the mentally ill person's maintenance, including treatment, in a hospital in which the person is hospitalized under this chapter. The Commission on Mental Health shall examine, under oath, the father, mother, husband, wife, and adult children of an alleged mentally ill person whenever those relatives live within the District of Columbia, and ascertain their ability or the ability of the estate to maintain or contribute toward the maintenance of the mentally ill person. The relatives or estate may not be required to pay more than the actual cost to the District of Columbia of maintenance of the alleged mentally ill person.

(b) If a person made liable by subsection (a) of this section for the maintenance of a mentally ill person fails so to provide or pay for the maintenance, the court shall issue to him a citation to show cause why he should not be adjudged to pay a portion or all of the expenses of maintenance of the patient. The citation shall be served at least 10 days before the hearing thereon. If, upon the hearing, it appears to the court that the mentally ill person has not sufficient estate out of which his maintenance may properly be fully met and that he has relatives of the degree referred to in subsection (a) of this section who are parties to

the proceedings, and who are able to contribute thereto, the court may make an order requiring payment by the relatives of such sums as it finds that they are reasonably able to pay and as may be necessary to provide for the maintenance and treatment of the mentally ill person. The order shall require the payment of the sums to the District of Columbia treasurer annually, semiannually, quarterly, or monthly as the court directs. The treasurer shall collect the sums due under this section and turn them into the Treasury of the United States to the credit of the District of Columbia. The order may be enforced against any property of the mentally ill person or of the person liable or undertaking to maintain him in the same way as if it were an order for temporary alimony in a divorce case. (Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1, effective Jan. 1, 1966.)